AMENDMENTS TO THE CLAIMS

The listing of claims provided below will replace all prior versions, and listings, of claims in the application.

Listing of Claims

1. (Currently amended) An isolated nucleic acid having the sequence of SEQ ID NO:1 operably linked to a heterologous nucleic acid.

2. (Currently amended) An isolated nucleic acid comprising a fragment of the sequence of SEQ ID NO:1 operably linked to a heterologous nucleic acid wherein said fragment has promoter activity.

3. (Currently amended) An isolated nucleic acid having at least 90% ~~70%~~ sequence identity to the sequence of SEQ ID NO:1, wherein said nucleic acid is operably linked to a heterologous nucleic acid, and wherein said nucleic acid has promoter activity.

4. (Currently amended) An isolated nucleic acid having promoter activity wherein said nucleic acid hybridizes to the sequence of SEQ ID NO:1 under high stringency conditions wherein said nucleic acid is operably linked to a heterologous nucleic acid, and wherein the high stringency condition is selected from the group consisting of incubation at 68°C in buffered aqueous solution or incubation at 42°C in 50% formamide.

5. (Canceled)

6. (Currently amended) A ~~The~~ nucleic acid construct comprising an isolated nucleic acid having promoter activity according to any one of claims 1-4 ~~of claim 5~~ further comprising a polyadenylation site at the 3' end of the heterologous nucleic acid.

7. (Currently amended) A vector comprising an isolated nucleic acid according to anyone of claims 1-4 and/or a nucleic acid construct according to ~~any one of claims 5-6~~ claim 6.

8. (Currently amended) A plant cell comprising a nucleic acid construct according to ~~any one of claims 5-6~~ claim 6.

9. (Currently amended) A transgenic plant or the progeny thereof comprising a nucleic acid construct according to ~~any one of claims 5-6~~ claim 6 or a plant cell according to claim 8.

10. (Original) The transgenic plant of claim 9 wherein the plant is selected from the group consisting of a monocotyledonous plant and a dicotyledonous plant.

11. (Original) The transgenic plant of claim 10 wherein the plant is a plant selected from the group consisting of cotton, rice, corn, wheat, barley, oat, rye, oil seed rape, potato, soybean, sunflower, sugar cane, sugar beet, alfalfa and banana.

12. (Canceled)

13. (Original) A vector comprising the nucleic acid construct of Claim 6.

14. (Original) A plant cell comprising the nucleic acid construct of Claim 6.

15. (Original) A transgenic plant or the progeny thereof comprising the nucleic acid construct of Claim 6.

16. (Original) A transgenic plant or the progeny thereof comprising the plant cell of Claim 8.

17. (Original) A transgenic plant or the progeny thereof comprising the plant cell of Claim 14.

18. (Original) The transgenic plant of Claim 15, wherein the plant is selected from the group consisting of a monocotyledonous plant and a dicotyledonous plant.

19. (Original) The transgenic plant of Claim 18, wherein the plant is a plant selected from the group consisting of cotton, rice, corn, wheat, barley, oat, rye, oil seed rape, potato, soybean, sunflower, sugar cane, sugar beet, alfalfa and banana.

20. (Original) The transgenic plant of Claim 16, wherein the plant is selected from the group consisting of a monocotyledonous plant and a dicotyledonous plant.

21. (Original) The transgenic plant of Claim 20, wherein the plant is a plant selected from the group consisting of cotton, rice, corn, wheat, barley, oat, rye, oil seed rape, potato, soybean, sunflower, sugar cane, sugar beet, alfalfa and banana.

22. (Original) The transgenic plant of Claim 17, wherein the plant is selected from the group consisting of a monocotyledonous plant and a dicotyledonous plant.

23. (Original) The transgenic plant of Claim 22, wherein the plant is a plant selected from the group consisting of cotton, rice, corn, wheat, barley, oat, rye, oil seed rape, potato, soybean, sunflower, sugar cane, sugar beet, alfalfa and banana.